

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 585 of 1997

in

SPECIAL CIVIL APPLICATION No. 2834 of 1997

with

LETTERS PATENT APPEAL No. 586 of 1997

in

SPECIAL CIVIL APPLICATION No. 3756 of 1997

with

LETTERS PATENT APPEAL No. 587 of 1997

in

SPECIAL CIVIL APPLICATION No. 3588 of 1997

with

LETTERS PATENT APPEAL No. 588 of 1997

in

SPECIAL CIVIL APPLICATION No. 3589 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURAT MUNICIPAL CORPORATION

Versus

INDIAN RAYON & INDUSTRIES LTD & Ors.

Appearance:

MR PRASHANT G DESAI for Petitioner

MR AC GANDHI for Respondent No. 1

CORAM :- MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 16/06/97

ORAL COMMON JUDGEMENT

Admitted.

2. Mr. A.C Gandhi, learned advocate appearing for respondents {original petitioners} waives service of notice of admission. In the facts and circumstances of the case, all the appeals have been taken up for final hearing today.

3. All these appeals are directed against a Common Order; interlocutory in nature, passed by the learned Single Judge in Special Civil Application Nos. 2834, 3756, 3588 and 3589 of 1997 on May 9, 1997. By the impugned order, the learned Single Judge granted interim relief, by which the original petitioners {respondents herein} are directed to furnish Bank Guarantee in favour of Surat Municipal Corporation {appellant herein}, that in case of difference of amount being payable on account of increase in octroi duty by the original petitioners, they will make the said payment. On such undertaking and furnishing bank guarantee, interim relief is granted against operation, implementation and execution of Explanation to Rule 2 (20), added by the Corporation in 1997.

4. Few necessary facts leading to filing of appeals may now be stated. Surat Municipal Corporation {"Corporation" for short} framed Octroi Rules & Standing Orders in the year 1975, which were amended from time to time. Rule 2 contains Definition and Sub-rule (20) thereof reads as under :-

(20) 'Value of the goods' where the octroi is charged advalorem shall mean the value of the goods made up of the cost price of the goods as ascertained from the original invoice plus shipping dues, insurance, customs duty, excise duty, sales tax, vend fee, freight charges, carriage charges and all other incidental charges

incurred by the Importer till the arrival of the goods at the Import Naka.'

4.1 It is the case of the Appellant-Corporation that Octroi can be levied on the basis of 'Value of the goods' as defined in Sub-rule (20) of Rule 2. Rule 4 is the enabling provision for imposition of octroi duty and it reads :-

'4. Subject to the provisions of the Act and Subject to the exemptions and provisions hereafter expressly specified, an Octroi on all articles of the description given in appended Schedule shall on the import thereof, for the purpose of consumption, use or sale within the octroi limits of the Corporation, be payable to the Corporation at the rates specified for such goods respectively in the said Schedule.'

4.2 It is the case of the Appellant-Corporation that even though the Corporation was entitled to levy octroi duty, some yarn manufacturers did not pay octroi duty and approached this Court by filing Special Civil Application No. 1812 of 1978. In that petition, Consent Terms were arrived at on October 9, 1980 and the Division Bench passed an order on the basis of compromise. The manufacturers were directed to pay the amount of 89% on 'Sale Value' of Yarn. Certain other manufacturers who were not parties to that petition and against whom octroi was sought to be recovered, approached this Court by filing various petitions. It was contended on their behalf that though they were similarly situated to the petitioners in Special Civil Application No. 1812 of 1978 referred to above, the said benefit was not extended to them and that action of the Corporation was arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Those petitions came to up for hearing before the Division Bench, which allowed those petitions holding that it was true that the petitioners in the subsequent petitions were not parties to the earlier petition but Surat Municipal Corporation, as a public body, could not have discriminated against the persons who were similarly situated merely because they had not approached this Court. Those petitions thus came to be allowed by a judgment dated 12/13th November, 1984.

5. Now, it is the case of the Appellant-Corporation that they have added 'Explanation' in the year 1997 after inviting objections in the year 1989 and considering them. It was decided to amend the Rules with effect from

February 2, 1997 and after over-ruling all objections raised against the proposed levy, a resolution was passed which was approved by the State Government pursuant to which, the manufacturers are required to pay Octroi duty on the basis of 100% Sale Value.

6. Being aggrieved by the said action, the petitioners have approached this Court. The learned Single Judge; as stated above, thought it fit to admit the matter by issuing 'Rule' and made it returnable on July 14, 1997. After hearing the parties, the learned Single Judge also granted interim relief.

7. We have heard at considerable length Mr. P.G. Desai for the appellant-Corporation and Mr. A.C. Gandhi, for the respondents. Mr. Desai contended that the order passed by the learned Single Judge requires interference by the Appellate Court inasmuch as in matters of payment of octroi or tax, no interim relief should be granted by the Court. Our attention was invited to decisions rendered in *Siliguri Municipality & Ors. v. Amalendu Das & Ors.*, AIR 1984 SC p/653 and *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd & Ors.*, AIR 1985 SC p/330. Mr. Desai also contended that so far as agreement is concerned, no doubt consent terms had been arrived at in 1980 and an order was passed on the basis of consent terms but that position no longer survives in view of the fact that now there is an amendment in the Rules. Presumption of constitutional validity is always there in favour of the State, and when prima facie there is nothing objectionable which is said to have been done by the Corporation, the learned Single Judge ought not to have granted interim relief. Mr. Desai submitted that before making amendment in the rules, notices were issued, objections were invited and were filed against the proposed amendment. It is true that it took some time but when objections were filed in the year 1989 and final decision was taken in 1996, it cannot be said that only because the amendment which was sought to be enforced in 1997 can be said to be illegal or ultra vires. Finally, Mr. Desai submitted that even if petitions are ultimately allowed, the Court can direct the Corporation to refund the amount. The Court can also pass an order and direct the Corporation to give an undertaking that in case petitions are allowed, the Corporation would pay the amount within the stipulated period. He, therefore, submitted that these are fit cases which require vacation of interim relief.

8. Mr. Gandhi, on the other hand, supported the

order passed by the learned Single Judge. He submitted that the order is interim in nature. Though it is appealable, an appellate court may not interfere with such order. He submitted that after hearing the parties, the Court thought it fit to grant interim relief and when the matters have been fixed for final hearing, there is no reason to interfere with such order. The learned Single Judge has taken into account the most material fact viz., the consent order which is passed as far back as in the year 1980 ie., Eighteen years have passed and for all the period, the petitioners have paid octroi on the basis of that order. Moreover, though objections were invited in 1989, the decision was taken in 1996. considering all these facts, the learned Single Judge granted interim relief, which may be continued. On merits, Mr. Gandhi submitted that though Rule 4 enables the Corporation to recover octroi on the basis of import of goods, the Explanation speaks of 'Sale Value' which is illegal, unlawful and ultra vires.

9. In the facts and circumstances of the case, in our opinion, it would not be advisable to interfere with interim order since the main matters are pending before the learned Single Judge. We, however, feel that when the learned Single Judge has admitted the matters and issued 'Rule' obviously prima facie case has been made out. In the light of all the facts, including the facts that the levy itself is sought to be challenged, the agreement/Consent terms were arrived at in the year 1980 and for 17 to 18 years, the payment has been made @ 89% and rule is made returnable in near future, it would not be appropriate to keep the present Letters Patent Appeals pending. At the same time, we are of the view that to the extend that interim relief is granted restraining the Corporation from recovering Octroi duty (11%), it requires to be modified. In our considered view, instead of continuing with interim relief subject to the petitioners filing an undertaking and furnishing Bank Guarantee, ends of justice would be met if the petitioners {respondents herein} are directed to pay the amount of Octroi duty. Such payments, however, will be without prejudice to their rights and contentions. We may also clarify that such payment may not be made to the Corporation but the petitioners may keep a separate Bank Account in any nationalized Bank. Such account may be opened in the name of "The Registrar, Gujarat High Court", in which such payment {payment of 11% difference between the amount which is actually paid till February 2, 1997 and which is to be paid from that date; as per the calculation of the Appellant-Corporation, as per the amended rules}, will be made. Initially, the said

account will be for a period of six months from today. If by that time, petitions are not disposed of, it will be continued for every three months, till petitions are disposed of. It will accrue interest, which will again be re-invested in the said account and the Court will pass appropriate orders at the time of final hearing. The petitioners will not use that amount nor deal with, in any manner whatsoever.

10. Mr. Gandhi, at this stage, prays that (i) in view of the order passed by the learned Single Judge, the Bank Guarantee is already furnished. In view of the order passed by us, action will have to be taken by the petitioners. He, therefore, prays that some time may be granted so that necessary steps can be taken in pursuance of this order. We grant six weeks' time. He further states that the order passed by us may be kept in abeyance so as to enable the petitioners to approach higher forum. We make it clear that our order will not operate for six weeks from today.

11. For the foregoing reasons, appeals are partly allowed to the extent indicated in the judgment, with no order as to costs.

Prakash*